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FILE: WAC 03 193 52043 Office: CALIFORNIA SERVICE CENTER Date: **MAR 24 2006**

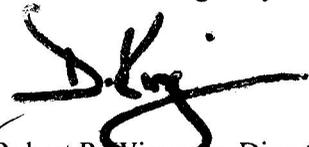
IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for Nonimmigrant Worker Pursuant to Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

ON BEHALF OF PETITIONER:
[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner is a business management and accounting firm. It seeks O-1 classification of the beneficiary as an alien with extraordinary ability in the arts under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i) as a music composer and screenwriter. The petitioner is the beneficiary's business agent.

The director denied the petition, finding that the petitioner had failed to establish that the beneficiary satisfies the standards for classification as an alien with extraordinary ability in the arts.

On appeal, counsel submits a brief and additional documentation.

Section 101(a)(15)(O)(i) of the Act provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability.

The issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary qualifies as an alien with extraordinary ability in motion pictures and television as defined by the statute and the regulations.

The regulation at 8 C.F.R. § 214.2(o)(3)(ii), defines, in pertinent part:

Extraordinary achievement in respect to motion picture and television productions, as commonly defined in the industry, means a very high level of accomplishment in the motion picture or television industry evidenced by a degree of skill and recognition significantly above that ordinarily encountered to the extent that the person is recognized as outstanding, notable, or leading in the motion picture or television field.

The regulation at 8 C.F.R. § 214.2(o)(3)(v) states that in order to qualify as an alien of extraordinary ability in the motion picture and television industry, the alien must be recognized as being prominent in his or her field of endeavor as demonstrated by the following:

(A) Evidence that the alien has been nominated for, or has been the recipient of, significant national or international awards or prizes in the particular field such as an Academy Award, an Emmy, a Grammy, or a Director's Guild Award; or

(B) At least three of the following forms of documentation:

(1) Evidence that the alien has performed, and will perform, services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements;

(2) Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications;

(3) Evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials;

(4) Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications;

(5) Evidence that the alien has received significant recognition for achievements from organizations, critics, governmental agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements; or

(6) Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence.

The beneficiary is a native and resident of Israel. According to the Form I-129, Petition for a Nonimmigrant Worker, the beneficiary last entered the United States on June 3, 2002 pursuant to classification as a B-2 nonimmigrant visitor. The beneficiary is a music composer and screenwriter for motion pictures and television.

The director analyzed the petitioner's evidence utilizing the evidentiary standard applicable to an alien seeking entry as an alien of extraordinary ability in the arts, which requires that the petitioner establish that the beneficiary has achieved "distinction." The regulation at 8 C.F.R. § 214.2(o)(3)(ii) provides:

Extraordinary ability in the field of arts means distinction. Distinction means a high level of achievement in the arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts.

As the director applied the wrong evidentiary standard to the petitioner's evidence, the matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.